

**MINUTES**

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
AUGUST 5, 1996

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 7 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Renee Kumor, Vice-Chair Vollie G. Good, Commissioner J. Michael Edney, Commissioner Bob Eklund, Commissioner Don Ward, County Manager David E. Nicholson, Assistant County Manager Angela M. Skerrett, and Clerk to the Board Elizabeth W. Corn.

Absent was: County Attorney Don H. Elkins, who was on vacation.

Also present were: County Planners Karen Collins and Stuart Rohrbaugh, and Utilities Easement Representative Doyle Freeman.

**CALL TO ORDER/WELCOME**

Chairman Kumor called the meeting to order and welcomed all in attendance.

**PLEDGE OF ALLEGIANCE**

Angela Skerrett led the pledge to the American Flag.

**INVOCATION**

Dr. Dean Turbeville, Senior Pastor of First Presbyterian Church, gave the invocation.

**DISCUSSION/ADJUSTMENT OF AGENDA**

There was none.

**CONSENT AGENDA**

Commissioner Good made the motion to approve the Consent Agenda as presented. All voted in favor and the motion carried.

CONSENT AGENDA included:

**Minutes** - Minutes of the following meetings were presented for the Board's review and approval: April 1, June 17, June 20, June 24, June 25, July 1, and July 17, 1996.

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**Notification of Vacancies** - The Board was notified of the following vacancies for information only. They will appear under "Nominations" on the next agenda:

1. WCCA Board of Directors - 1 vac.
2. Hendersonville City Zoning Board of Adjustment - 4 vac.

**Road Petitions** - The Board was notified of road petitions which had been received for addition to the State Maintenance System for the following:

1. Burnside Trail
2. Katie Drive, portion of Tootsie Circle
3. Edelweiss Drive

**Rescheduling Public Hearing on Proposed Amendment to the Official Zoning Map - Extending Zoning to a Portion of Pinnacle Mountain Road - Application #Z-13-96 by Brenda B. Coates**

The Public Hearing for this item, previously set for August 5, 1996, must be set again as notice of the hearing was not published in the newspaper as required. Staff recommended that the hearing be rescheduled for Tuesday, September 3, 1996, at 7 p.m.

**Set a Public Hearing for amendments to the Henderson County Water Supply Watershed Ordinance Text** - Amendments (draft 7/9/96) have been reviewed and favorably recommended by the Henderson County Planning Board. These text amendments were offered as a result of action by the North Carolina Environmental Management Commission regarding a new watershed designation for the Lower Mills River Watershed (WS-III) which will become effective no later than the end of this calendar year. Planning staff recommended a Public Hearing be set for Tuesday, September 3, 1996, at 7 p.m.

**Request for Improvement Guarantees - Carriage Park Development Corporation Development Parcel Infrastructure to Carriage Park, Section 14**

Carriage Park Development Corporation has submitted an application for improvement guarantees for development parcel infrastructure including water, road, and drainage improvement to Carriage Park Way to serve Carriage Forest, Section 14. The Development Plan for this subdivision was approved by the Henderson County Planning Board on March 26, 1996.

The developer intends to provide an Irrevocable Letter of Credit from First Union Bank in the amount of \$43,890.62 which includes a 25% overhead factor. A draft agreement was provided. The

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Assistant County Manager/Staff Attorney must approve the agreement as to form before the document can be executed.

**Acceptance of Commercial Boulevard for State Road Maintenance**

The Board of Commissioners must formally act to request that Commercial Boulevard, located in Appleland Business Park, be added to the NCDOT Road Maintenance system. Since the County still owns title to the road, it is not necessary that all other abutting property owners sign the petition.

**INFORMAL PUBLIC COMMENTS**

There were none.

**PUBLIC HEARING - Request to Amend the Official Zoning Map of Henderson County - Extending Zoning to a Portion of Pinnacle Mountain Road - Application #Z-13-96 by Brenda B. Coates**

Postponed, see Consent Agenda

**PUBLIC HEARING - Request to Amend the Official Zoning Map of Henderson County - Application #R-16-96 by Duke Power Company - Oak Grove Road**

Commissioner Eklund made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Karen Collins explained that this is a request to amend the Official Zoning Map of Henderson County submitted by Duke Power Company. Duke Power has requested that the County rezone a parcel, approximately 9.3 acres in size, which the company owns on the west side of Oak Grove Road in East Flat Rock. The parcel is currently zoned R-20 (low density residential).

Duke Power originally requested that the property be rezoned to an I-2 (general industrial) district. On June 25 1996, the Henderson County Planning Board voted 5 - 1 to send the Board of Commissioners a favorable recommendation on rezoning the Duke Power property from an R-20 district to a C-2 (neighborhood commercial) district. Duke Power Company representatives have stated that they do not object to a C-2 designation. Planning staff recommended that the property be rezoned to an O & I (office & institutional) district.

In accordance with Section 1204 of the Henderson County Zoning Ordinance, notices of this public hearing were published in the July 20, 1996 and the July 27, 1996 editions of the Times-News. On

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July 26, 1996, the Planning Department mailed notices of the hearing to Duke Power Company representatives and to the owners of property adjacent to the subject Duke Power property.

As requested by the Board of Commissioners on July 17, 1996, the public hearing notices advertised that the Board would be considering three zoning district options: C-2, I-1, and O & I.

**Public Input**

1. Jack & Ruby Thompson - Ms. Thompson spoke in opposition to the proposed rezoning of the Duke Power property.

2. Bob Byrd - Mr. Byrd spoke representing Duke Power, the petitioner, for the zoning change.

3. Lynn Frisbee - Ms. Frisbee spoke in opposition of the proposed zoning. If the Board does intend to zone the property, she requested that it be zoned O & I.

No action was taken.

**REQUEST TO AMEND THE OFFICIAL ZONING MAP OF HENDERSON COUNTY**  
**APPLICATION #R-10-96 (rezoning R-20 to O & I)**  
**Mr. Phillip Todd Moss, Applicant**

**Public Input**

1. Eva Richie - Ms. Richie spoke in opposition of the proposed zoning.

2. Jack Tate - Attorney Tate spoke on his client's behalf, the petitioner.

Commissioner Edney proposed that the Board alter the proposed boundary for zoning, using the creek as a boundary. The creek dissected the property on the original zoning request. With this change in boundary, Mr. Moss's home is in an R-20 district while from the creek north his property would be in the newly proposed zoning district.

Following much discussion, Commissioner Good made the motion to approve the zoning request for the full length of the proposed area, from the Creek north. This area is between the creek and Hwy.#64 West, bounded by Bonaire Drive and Shaws Creek Drive. The motion carried four to one with Chairman Kumor voting nay.

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UPDATE ON PENDING ISSUES/Request for Direction to the Chair

**1. BRCC salary discussion** - Following much discussion, Commissioner Edney made the motion to approve the 5% supplement, but to do it county-wide, to be equitable. A vote was taken, the motion failed two to three with Commissioners Edney and Ward voting aye.

Commissioner Good made the motion to continue with the 5% supplement as the Board has done previously for BRCC. This would mean deleting Section 17, Article 9 of the Budget Ordinance.

Commissioner Ward made the motion to table Mr. Good's motion until we can get a copy of Dr. Sink's contract. A vote was taken and the motion failed two to three with Commissioners Edney and Ward voting aye.

A vote was taken on Mr. Good's motion. The motion carried three to two with Commissioners Kumor, Good, and Eklund voting aye.

Chairman Kumor will send a letter to BRCC to see if they would like to meet with the Board of Commissioners.

**2. Set joint meeting with municipalities** - It was the consensus of the Board to try to have a joint meeting on Thursday, September 5 at 7 p.m., here. Staff will contact the municipalities to see if that date and time is convenient with them.

**3. Land Use Issues** - Chairman Kumor briefly mentioned Land Use Issues and stated that we would try to have that as part of the agenda for the August 21 meeting.

**4. State Dept. Of Aviation** - There was brief discussion of the Hendersonville Airport. The SBI has given the site a clean bill of health. Following much discussion, it was the consensus of the Board to continue with the project. Staff will ask the engineer to wrap up the project and try to get the Board an answer.

NOMINATIONS

Chairman Kumor reminded the Board of the following vacancies and opened the floor to nominations:

**1. Senior Companion Program - 1 vac.**

There were no nominations at this time so the item was rolled to the next meeting.

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**2. Motor Vehicle Valuation Review Board - 2 vac.**

There were no nominations at this time so the item was rolled to the next meeting.

**3. Henderson County Industrial Facilities & Pollution Control Authority - 1 vac.**

There were no nominations at this time so the item was rolled to the next meeting. Chairman Kumor was asked to call Anne G. Whitmire to see if she could serve on this committee.

**4. Asheville Buncombe Water Authority (ABWA) - 1 vac.**

There were no nominations at this time so the item was rolled to the next meeting.

**5. Henderson County Board of Health - 1 vac.**

Keith Dale was nominated at the July 17 meeting. There was not a full Board in attendance so no vote was taken.

Commissioner Ward made the motion to suspend the rules and appoint Mr. Dale. All voted in favor and the motion carried.

**6. Mtn. Area Workforce Development Board - 2 vac.**

There were no nominations at this time so the item was rolled to the next meeting. These are vacancies that must be filled by the Chamber of Commerce. We are waiting on their recommendations for appointment.

**7. Multipurpose Center Steering Committee - 1 vac.**

John McCormick was nominated at the July 17 meeting to replace Dr. B.J. Romeo. No vote was taken.

Commissioner Edney made the motion to suspend the rules and appoint Mr. McCormick. All voted in favor and the motion carried.

**8. Nursing/Adult Care Home Community Advisory Committee - 2 vac.**

One term expired 7/96 and one will expire 9/96, both are designated positions but have gone through the process. The Board can now nominate but then must notify the Nursing Homes and wait 10 days before making appointments.

Commissioner Edney nominated Barbara Head and Lorraine Finley for reappointment.

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**IMPORTANT DATES**

The calendar was reviewed but no new dates were added other than the two Public Hearings which were set by Consent Agenda for Tuesday, September 3 at 7:00 p.m.

**CANE CREEK WATER AND SEWER DISTRICT**

Commissioner Edney made the motion for the Board to adjourn as Henderson County Board of Commissioners and to convene as Cane Creek Water and Sewer District. All voted in favor and the motion carried.

**Minutes** - Minutes were reviewed and approved of the April 19, 1995 and the July 19, 1995 meetings.

**Sewer Line Extension Request (X00018CC)**

**St. John's Commons (Windsor/Aughtry Company, Inc.)**

This request was approved. For full report of CCWSD, please see Cane Creek Minutes in a separate minute book

Commissioner Ward made the motion for the Board to adjourn as the Cane Creek Water & Sewer District and to reconvene as the Henderson County Board of Commissioners. He also moved as allowed under NCGS 143-318.11 for the Board to go into Closed Session for the following reasons:

1. (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.

2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

All voted in favor and the motion carried.

**CLOSED SESSION**

Please see above for the motion to go into Closed Session.

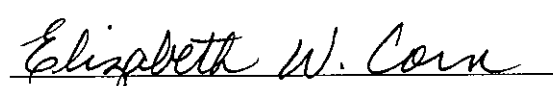
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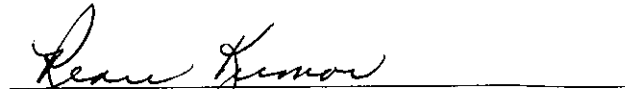
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Commissioner Eklund made the motion for the Board to go out of Closed Session and to adjourn.

No Action Taken following Closed Session.

ATTEST:

  
Elizabeth W. Corn, Clerk

  
Renee Kumor, Chairman



STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this the 5TH day of August, 1996, by and between **Carriage Park Development Corporation**, hereinafter known as "The Subdivider", and the Henderson County Board of Commissioners, hereinafter known as "The Board."

**WITNESSETH:**

WHEREAS, the Subdivider is attempting to secure from the Board approval of improvement guarantees in lieu of completing off-site development infrastructure to a proposed subdivision development parcel boundary known as Carriage Park, Section 14, located in Henderson County, North Carolina; and

WHEREAS, a Special Use Permit (SP-93-13) was issued to the Subdivider on the 11th day of October 1993 (and as subsequently amended), hereafter, "Special Use Permit" and of which requires the completion of certain off-site development infrastructure to the proposed subdivision development parcel boundary prior to Final Development Plan approval; and

WHEREAS, the Special Use Permit allows for improvement guarantees to be administered according to Section 551 of a County Ordinance entitled Land Development Ordinance for the County of Henderson as adopted by the Board of Commissioners of Henderson County on the 8th day of February 1988, (and as subsequently amended); and

WHEREAS, said Ordinance allows the Board of Commissioners at its discretion, to permit the Subdivider to post with Henderson County an Irrevocable Letter of Credit from a banking corporation licensed to do business in North Carolina to guarantee the completion of said required improvements; and

WHEREAS, the Planning Board has previously approved with conditions the Development Plan for said Subdivision and the Land Development Administrator desires to approve the Final Development Plan for said subdivision and, in lieu of requiring completion of off-site development infrastructure improvements prior to said approval, will accept from the Subdivider an Irrevocable Letter of Credit to guarantee and secure completion of said improvements.

**IT IS THEREFORE, AGREED AS FOLLOWS:**

1. The Subdivider will, on or before the **1 December, 1996**, complete as required the following off-site development infrastructure to the proposed subdivision boundary known as Carriage Park, Section 14:

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- a. Construction, stormwater drainage and asphalt paving of a portion of Carriage Park Way, from the existing pavement to the proposed intersection of proposed Woodsong Drive, as shown on the plans titled Carriage Park, Erosion Control Plan - Section D - Collector Road, dated 6-17-94 prepared by Luther E. Smith & Associates, P.A., Land Planning & Landscape Architecture Hendersonville, North Carolina job: 92L222, said plans being incorporated by reference as if fully set forth herein; and,
  - b. Construction of waterline distribution system as shown on the plans titled Carriage Park, Section 14, Water System Improvements, dated 7-96 prepared by William G. Lapsley and Associates, P.A., Consulting Engineers & Land Planners Hendersonville, North Carolina job: 95216, said plans being incorporated by reference as if fully set forth herein; and,
  - c. Construction and improvements according to the attached preliminary cost estimate from John B. Jeter, (Subparagraphs a, b, and c above collectively hereinafter referred to as "said improvements").
2. The Subdivider shall file with Henderson County an Irrevocable Letter of Credit issued by First Union Bank in the amount of **\$43,890.62** securing and guaranteeing completion of said improvements by the required date with such Irrevocable Letter of Credit expiring at least 60 days after the above stated completion date; and.
3. When the Irrevocable Letter of Credit referred to in paragraph two above is reviewed and recommended for acceptance by the Henderson County Staff Attorney and all other requirements of said Land Development Ordinance are met, including any conditions specified by the Planning Board as part of the approval of the Development Plan, then the Board will allow the Final Development Plat of Carriage Park Section 14, to be approved by the Land Development Administrator.
4. Upon completion of said improvements and subsequent inspection for satisfactory completion, Henderson County will release such guarantees. Release may be made in increments of not less than 25 percent, upon request by the developer, by the Henderson County Manager where, in the discretion of the County Manager, satisfactory progress towards completion of said improvements, roughly proportional to the release requested, has been made by The Subdivider.
5. The developer may, in writing, request an extension of the improvements completion date. The County Manager shall have the authority to grant the extension if the developer deposits with the County a new irrevocable letter of credit to guarantee the completion of required improvements. The letter of credit, by its terms, must expire no earlier than sixty (60) days past the requested extension date, and must be approved by the Staff Attorney. As imposed by Section 551.3 of the Henderson County Land Development Ordinance, the time between initiation and the completion of the required

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Improvements, including any provision for extension, shall not exceed two years unless approval is granted by the Henderson County Board of Commissioners.

The Board has, by appropriate action, caused this Agreement to be reviewed for approval by the Staff Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Subdivider has, by appropriate action of its Board of Directors, caused this Agreement to be executed by its President and attested by its Secretary under corporate seal, both executions being made in duplicate, each to have the force and effect of an original, this the 5<sup>th</sup> day of August, 1994. 6

Approved As To Form:

HENDERSON COUNTY  
BOARD OF COMMISSIONERS

Angela M. Akers  
Staff Attorney

By: Leslie Husman  
Chairman

Attest: (County Seal)

Elizabeth W. Corn  
Clerk

CARRIAGE PARK DEVELOPMENT CORPORATION

Attest: (Corporate Seal)

Angela Sanchez  
Secretary

By: Shyke [Signature]  
President/Vice President


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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Susan S. Vaughn, Notary Public for said State and County certify that Raymond Cracchiolo, personally came before me this day and acknowledged that (s)he is ~~Secretary~~ President of Carriage Park Development Corp., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by Jane E. Cracchiolo self as its Secretary.

Witness by hand and notarial seal, this the 8th day of August, 1996.

  
Notary Public

My Commission Expires:  
November 14, 2000

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